

SHELL OIL COMPANY

IBLA 77-2

Decided February 4, 1977

Appeal from decision of Alaska State Office, Bureau of Land Management, denying permission to conduct geophysical exploration on withdrawn lands in Alaska, AK-0102-04G-134.

Affirmed.

1. Minerals Exploration--Public Lands: Special Use Permits --Special Use Permits

Where the declared administrative policy is to refuse permission for geophysical exploration on lands controlled by section 17(d)(1) of the Alaska Native Claims Settlement Act and the subject lands are under consideration for possible inclusion in the national forest system, a decision refusing such permission will be affirmed.

APPEARANCES: T. S. Cate, Anchorage, Alaska, for Shell Oil Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Shell Oil Company appeals from the August 20, 1976, decision of the Alaska State Office, Bureau of Land Management (BLM), denying permission to conduct geophysical exploration on public lands in Alaska. The lands are of the category controlled by section 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1616(d)(1) (Supp. IV, 1974). That section of ANCSA provides that the Secretary of the Interior may withdraw public land from mineral leasing in the public interest. The lands in question are withdrawn for consideration by Congress of possible future inclusion in the Yukon-Kuskokwin National Forest. Even though appellant recognizes that the Secretary was granted very broad discretionary authority under this section of ANCSA, it states that it is unable to find support in the legislative history delegating the authority

to prohibit geophysical exploration involving the use of motorized vehicles. Appellant also suggests that the land ought to be managed in the same manner as land withdrawn under another section of ANSCA, thus permitting the desired exploration.

[1] The fact that Congress did not specify how the lands were to be managed, but instead delegated very broad authority and discretion to manage the lands to the Secretary is demonstrative of an intent by Congress that the lands should be managed in the public interest. Moreover, the Secretary of the Interior is the one official entrusted to determine what that interest is. The only logical inference that can be drawn from the Act is that Congress intended that the Secretary have discretion fettered only by a rule of reason with regard to the public interest. If the Secretary of the Interior has the authority to refuse to issue an oil and gas lease, then, a fortiori, he has the authority to prohibit any activity on public land connected with the exploitation of oil and gas. This Board has held that the Secretary may refuse to issue an oil and gas lease, whether or not the land has been withdrawn, where environmental considerations or other public policy reasons so dictate. Cartridge Syndicate, 25 IBLA 57 (1976); L. A. Idler (Supp.), 28 IBLA 8 (1976).

Moreover, it is the policy of this Department, as set forth in statements to members of Congress, to prohibit any exploration on 17(d)(1) lands involving the use of motorized vehicles. In a letter responding to questions asked by Senator Church about Departmental policy in Alaska, the Director of the Bureau of Land Management replied as follows:

Question 8: If there are no regulations in effect for seismic exploration for oil and gas on d-2 lands, how is this kind of activity controlled? Are seismic operations on d-2 and d-1 lands monitored by Interior?

Response: Because of the potential for damage of the surface, the Department discourages any seismic exploration on lands within the legislative proposals. At the persuasion of the Department, no recently known seismic exploration has occurred on d-1 or d-2 withdrawn lands. Geologic mapping and the study of surface geology without the use of heavy equipment and motor vehicles are permitted with adequate stipulations and restrictions to protect the land. \* \* \*

In sum, the Secretary of the Interior has the discretionary authority to prohibit seismic exploration on the lands in question

and, in the exercise of that discretion, those duly delegated with the Secretary's authority have refused to permit it. Until that policy is expressly changed, we are obliged to affirm the application of that policy.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

